

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Transfer Petition (Criminal) No.01 of 2019**

- Smt. Sarita Shrivastava W/o Late Ganesh Shrivastava Aged About 51 Years R/o Bajrang Nagar, Amapara, P. S. Saraswati Nagar, Raipur Tahsil And District Raipur Chhattisgarh

---- **Petitioner****Versus**

- Smt. Urvashi Thakur W/o Late Ramswaroop Thakur Aged About 66 Years R/o Shivaji Chowk Masjid Road Tikrapara, P. S. Tikrapara, Raipur Tahsil And District Raipur Chhattisgarh

---- **Respondent**

 For the Petitioner : Shri Shrawan Agrawal, Advocate
 For the Respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

25.03.2019

1. This transfer petition under Section 407 of the Code of Criminal Procedure, 1973 has been filed for transferring Criminal Complaint Case No.238/2013 (Smt. Urvashi Thakur vs. Smt. Sarita Shrivastava) filed under Section 138 of the Negotiable Instruments Act, 1881 to any other Court.

2. As per the version of the petitioner, from 30.6.2018 to 03.7.2018 the complainant of the case could not be cross-examined on account of deliberate absence of main counsel for the complainant but ultimately cross-examined on 04.7.2018. Thereafter the complainant herself present for cross-examination on 11.7.2018 after passing trouble on so many dates. Before the completion of the cross-examination, the trial Court ordered presence of Navneet Shrivastava and thereafter Navneet Shrivastava appeared on 09.7.2018 as court witness and he has been examined and cross-examined by the

Court. After examination and cross-examination of Navneet Shrivastava, the trial Court again gave time to the complainant for her cross-examination but ultimately she cross-examined on 11.7.2018. The trial Court fixed a date for statement of the accused under Section 313 of the CrPC and examination of the accused was done. After examination of the accused, the petitioner filed an application under Section 311 of the CrPC on 28.10.2017 and the trial Court gave six months time to the complainant for submission of reply. The case is very old and pending for more than 12 years. On 24.7.2018 the case was fixed for examination of the defence witnesses. The defence witnesses came from Dantewada but the time given to the complainant on 04.8.2018. Thereafter the Presiding Officer said for settlement of the case. It appears that the Presiding Officer is taking personal interest in the case and trying to misuse the process of law, therefore, the case should be transferred to some other Court. In support of his arguments, learned counsel for the petitioner placed reliance in the matters of **Sarasamma @ Saraswathiyamma vs. State Rep. By Deputy Superintendent of Police and Ors.** reported in **2018 STPL 6450 SC**, **Joginder Singh & Ors. vs. CBI & Ors.** reported in **2016 STPL 807 Delhi** and **Vinay Alias Abhishek & Ors. vs. State of CG** reported in **2011 STPL 21541 Chhattisgarh**.

3. The core issue for consideration before this Court is whether the case should be transferred to dispensation of justice which is central criteria for transferring of the case. From the record it is clear that the case is pending before the trial Court for long period and it is now at the fag end of the trial because the statement of the accused is already recorded and after the examination of the defence

witnesses, the trial court has to hear brief arguments of both sides and then record finding on the issues between the parties. The trial Court has made efforts for settlement between the parties and the same is natural because alternative dispute resolution is prevailing in judicial system. Adjournment is sought by either parties during the course of the trial and the same is not objectionable because for some or other reason every party seeks adjournment, therefore, adjournment itself is not a ground to say that some compelling reason for transferring the case from one Court to other Court. The petitioner has all the rights to take legal recourse against any interlocutory order passed by the trial Court and the interlocutory order passed by the trial Court is also not compelling reason for transferring of the case. Not only against the interlocutory order but against final order also the petitioner has all the rights to seek legal recourse of appeal/revision.

4. Looking to the entire ground, it cannot be said that it is essential or compelling from the point of view of public justice to exercise power of transfer. The case law cited by the petitioner as mentioned above is distinguishable from the facts and circumstances of the case.

5. Accordingly, the petition is liable to be and is hereby dismissed.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**